

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR 18 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Reexamination of the Comparative Standards for)
Noncommercial Educational Applicants)

MM Docket No. 95-31

TO: The Commission

PETITION FOR RECONSIDERATION

Adventist Radio Network, Inc. ("ARN"), by counsel and pursuant to §1.106 of the Commission's rules, hereby respectfully petitions the Commission to reconsider certain elements of its *Memorandum Opinion and Order* (the "MO&O"), FCC 01-64 (released February 28, 2001) in the above-identified proceeding. ARN has previously submitted Comments in this proceeding.¹

Notice of the MO&O was published in the *Federal Register* on March 19, 2001, at 66 Fed.Reg. 15353. This Petition is being submitted within 30 days of that date and is therefore timely.

The MO&O is the Commission's response to earlier petitions filed by other parties requesting reconsideration of the *Report and Order* (the "R&O"), 15 FCC Rcd. 7386 (2000).

Pursuant to §1.106(k)(3) of the Commission's rules, an order disposing of petitions for

¹ARN is a nonprofit membership organization whose member radio stations are licensed either to institutions affiliated with the Seventh-day Adventist Church or to other entities owned or controlled by individuals who are members of the Church. There are 28 member stations, of which 22 are noncommercial stations. Members and/or their affiliates have some 29 applications pending for new full service noncommercial stations.

reconsideration which reverses or modifies a previous ruling is itself also subject to petitions for reconsideration. ARN seeks reconsideration of one aspect of the new rules about comparative standards for noncommercial stations that was only stated for the first time in the MO&O and is therefore subject to reconsideration.

In the R&O, the Commission established a point system for resolving conflicts among competing mutually exclusive noncommercial applicants, which was generally affirmed on reconsideration. One of the criteria for earning points concerns being an established local entity. Applicants with a headquarters, campus or 75% of their board members' residences within 25 miles of the reference coordinates of the community of license will be considered local and earn three points. MO&O, at ¶50. To earn the points, an applicant's localism must be "established," that is, it must have met this criterion continuously for two years prior to the date of filing the application. Furthermore, the applicant itself must have been in existence for that two-year period as an established corporation (or other nonprofit entity). As the Commission said, "an organization [formed by local citizens, but] in existence for less than two years prior to our "snap shot" date may be 'local' but cannot be considered 'established.'" MO&O, at ¶52.

With most of the comparative criteria, the date for fixing the applicant's qualities, i.e., the "snap shot" date, is established as the filing date. However, the Commission has a substantial backlog of applications received over the course of several years that were filed without the benefit of established comparative criteria. These applicants were unable to report their characteristics relevant to the comparative criteria in their applications because no one knew what these criteria would be. To bridge this transition to the new rules, the Commission has announced a deadline of June 4, 2001 for the filing of amendments to supplement pending applications with

information pertinent to the new comparative criteria. *Public Notice*, DA 01-729, released March 22, 2001. For most nontechnical criteria, this deadline for filing the supplemental amendments, June 4, 2001, will serve as the “snap shot” date for pending applications. MO&O, at ¶30. The Commission applied this principal to the “established local” criterion as well. Applicants claiming the points for being locally established will have to show that they qualified as local for the two-year period immediately preceding the supplement date, June 4, 2001. MO&O, at ¶52. Applicants with pending applications will not be required to demonstrate that they were qualified two years prior to their filing date, as will be required of all future applicants.

ARN seeks reconsideration of this point. It submits that applicants with pending applications should be required to have qualified in all respects on the localism criterion for at least two years before the date on which their applications were filed rather than two years before June 4, 2001. Any other arrangement would be a haphazard partial enforcement of the regulation and would have the potential to defeat the stated purpose for the requirement. It would also produce an uneven and unintended inequity among applicants by virtue of the accident of their having to wait for varying periods of time from filing their respective applications until the conclusion of this rulemaking proceeding. Local citizens who come together for the sole purpose of pursuing an application for a new noncommercial station most likely only established their corporation at about the same time they filed their FCC application. Some applicants have been waiting for a resolution of these matters since the mid-1990s. By merely idly waiting in line all that time, they will have “earned” the merit intended for long-term locally established entities because they will have been organized for two years before June 4, 2001. Applicants who did not file their FCC applications until more recently and who also naturally did not organize their

entities until more recently are left without the benefit of this unforeseen circumstance, and unfairly so if others who happened to file their FCC applications and incorporation papers earlier reap a windfall from such a historical accident.

In the MO&O, the Commission reiterated its position stated in the R&O that measuring the relative “localism” of competing applicants would be difficult without time standards. There was a concern that organizations from outside of the community could engage local “straw men” to set up local corporations and front as local applicants. Thus it was deemed useful to establish a minimum time frame prior to the filing date during which the applicant entity was able to show itself to be bona fide and a legitimately local player. For this purpose, a two-year period was adopted. The Commission stated that “this requirement would serve to limit the feigning of local qualifications, to establish the applicant’s educational credentials in a particular locality and to foster participation by truly local entities in noncommercial educational broadcasting.” MO&O, ¶52.

This purpose for the two-year time requirement is not served by adopting an arbitrary date in the middle of the process as the measuring point. Some applicants are allowed to earn points for merely being there, while others are excluded for merely filing later during the same prolonged period of time when the Commission’s rules were in limbo. All such applicants involved in this transition period should be required to demonstrate the bona fides of their localism back to the date two years prior to the date on which their FCC applications were filed.

ARN respectfully urges the Commission to reconsider this provision of its comparative criteria and to amend its rules and policies accordingly.

Respectfully submitted,

ADVENTIST RADIO NETWORK, INC.

By: 
Donald E. Martin

DONALD E. MARTIN, P.C.
6060 Hardwick Place
Falls Church, Virginia 22041
(703) 671-8887

Its Attorney

April 18, 2001